

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel DiRocco	Team: Team # 3	CCRB Case #: 201202911	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/15/2012 11:42 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 7/15/2013	EO SOL 7/15/2013	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/06/2012 11:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM John Diaz	03864	948884	PBBN
2. Officers			PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Chang	17970	949848	PBBN
2. POM Mark Ozechowski	05860	949433	PBBN
3. POM Nickalai Pillai	03492	949487	PBBN
4. POF Katherine Emilio	20141	948933	PBBN
5. POM Nicholas Accetta	05404	950400	PBBN
6. POM Jason Acevedo	25347	949958	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM John Diaz	Force: Officer John Diaz used physical force against § 87(2)(b)	§ 87(2)(b)
B. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 19, 2012, § 87(2)(b) filed this complaint on behalf of her son, § 87(2)(b) with the Internal Affairs Bureau (IAB) via telephone [enclosed 3]. IAB, in turn, assigned this case IAB log number 12-12332, which was received by the CCRB on March 6, 2012 [enclosed 4A-4B].

At approximately 11:42 p.m. on January 15, 2012, multiple officers assigned to the 75th Precinct's Impact Response Team, received a radio transmission indicating that § 87(2)(b) was discharging his BB gun inside of § 87(2)(b) in Brooklyn. The officers responded to the location and the following allegations resulted:

- **Allegation A—Force: Officer John Diaz used physical force against § 87(2)(b)**

§ 87(2)(b) :

§ 87(2)(b), § 87(2)(g)

- **Allegation B—Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) is a Hispanic male who was § 87(2)(b) years old at the time of the incident. He is 5'6" tall and 140 pounds. § 87(2)(b) has black hair and brown eyes.

Statements to Medical Personnel

Approximately one hour after his arrest, § 87(2)(b) was treated by paramedics inside of the 75th Precinct stationhouse. During treatment, he complained of pain to the left side of his face and of pain to his right ribs [enclosed 25A-25B].

Arrest Photograph

§ 87(2)(b) arrest photograph [enclosed 6] reveals a slight bruise to his left eye. There are no additional signs of physical injury.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 5, 2012 [enclosed 5A-5D]. His statement is summarized below.

At approximately 11:42 p.m. on January 15, 2012, § 87(2)(b) and his mother, § 87(2)(b) were arguing over § 87(2)(b) possession of a BB gun inside of their house, § 87(2)(b) in Brooklyn. § 87(2)(b) subsequently called 911, requesting that police respond to her home and confiscate the BB gun from § 87(2)(b).

Within 20 minutes, roughly 20 to 30 officers arrived. However, § 87(2)(b) had already discarded the BB gun.

Intending to inform the officers of the above, § 87(2)(b) opened the front door. At that point, § 87(2)(b) was standing at the top of the stairwell which is immediately in front of the door.

When § 87(2)(b) opened the door, two officers, identified via investigation as Officer John Diaz and Officer Katherine Emilio, both of Patrol Borough Brooklyn North, were standing outside only a few feet away. § 87(2)(b) remained calm and explicitly

invited the officers inside. Before § 87(2)(b) could move, Officer Diaz, without saying anything, punched him underneath one of his two eyes.

In reaction to the punch, § 87(2)(b) fell backwards onto the stairwell and curled into a fetal position. Officer Diaz ran into the house, yelling, “Stop resisting,” and placed his knee on § 87(2)(b) abdomen.

Additional officers whom § 87(2)(b) could not describe, then entered the location. The officers grabbed § 87(2)(b) arms and legs, and dragged him out of the house onto the front property.

Once outside, the officers “hit” § 87(2)(b) on different parts of his body. § 87(2)(b) could not describe the way in which he was “hit” in more detail. This includes where on his body the officers struck him, how many times the officers struck him, or whether the officers’ hands were open or closed. § 87(2)(b) did, however, state that the officers were taking “cheap shots” and that he sustained bruising to his ribs. He did not recall when he was handcuffed.

§ 87(2)(b) testified that he did not physically resist the officers at any point during the encounter.

Unidentified officers subsequently transported § 87(2)(b) to the 75th Precinct stationhouse. There, he requested medical attention. § 87(2)(b) was taken to § 87(2)(b) for treatment and was released back into police custody within a few hours.

Complainant/Witness: § 87(2)(b)

- § 87(2)(b) is a Hispanic female who was § 87(2)(b) years old at the time of the incident. She is 5’4” tall and 220 pounds. § 87(2)(b) has brown hair and brown eyes.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 5, 2012 [enclosed 7A-7D].

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

As soon as § 87(2)(b) opened the door, Officer Diaz punched him on the face.

§ 87(2)(b) did not see what part of § 87(2)(b) face was punched.

§ 87(2)(b) did not say anything or move prior to the punch. In addition, Officer Diaz did not first say anything to § 87(2)(b)

In reaction to the punch, § 87(2)(b) fell onto the stairwell, landing on his back. Officer Diaz immediately entered the location and placed his knee on § 87(2)(b) abdomen. § 87(2)(b) did not recall the location of additional officers at that point or their actions. § 87(2)(b) struggled with Officer Diaz, screaming, kicking, and “moving around” as Officer Diaz tried to physically gain control of him.

Officer Diaz pulled § 87(2)(b) out of the house onto the front property. § 87(2)(b) ran downstairs to the door, but was unable to see what happened outside, as one of the officers blocked her from exiting the house.

NYPD Statements

Subject Officer: OFFICER JOHN DIAZ

- *Officer Diaz is a § 87(2)(b)-year-old Hispanic male. He is 5'10" tall and 215 pounds. Officer Diaz has brown hair and brown eyes.*
- *On January 15, 2012, Officer Diaz, of Patrol Borough Brooklyn North, was dressed in uniform and assigned to the 75th Precinct's Impact Response Team. He was partnered with Officer Katherine Emilio, also of Patrol Borough Brooklyn North, in a marked patrol van. Officer Diaz worked from 6:00 p.m. on January 15, 2012 to 2:35 a.m. on January 16, 2012.*

Arrest Documentation

Officer Diaz prepared § 87(2)(b) arrest report [enclosed 9A-9C] and the criminal complaint report [enclosed 8A-8B] related to the incident. § 87(2)(g) They state that § 87(2)(b) had repeatedly discharged a BB gun inside of his home, endangering the safety of others who lived at the location. When the officers arrived and attempted to place § 87(2)(b) under lawful arrest, he refused to be handcuffed, flailing his arms and twisting his legs.

§ 87(2)(b) was arrested § 87(2)(b)

Memo Book Entries

At 11:45 p.m., Officer Diaz received a radio transmission indicating the presence of a firearm at § 87(2)(b). At 11:47 p.m., Officer Diaz arrived at the location. At 11:48 p.m., while Officer Diaz was approaching § 87(2)(b), § 87(2)(b) swung his arm at him and attempted to close the door in his face, saying, "This is fucking private property." A BB gun was eventually recovered. Officer Diaz used physical force to prevent escape and to overcome assault by § 87(2)(b) who was combative. At 12:05 a.m., Officer Diaz noted § 87(2)(b) § 87(2)(b)' arrest § 87(2)(b)

CCRB Statement

Officer Diaz was interviewed at the CCRB on May 3, 2012 [enclosed 12A-12C]. His statement is summarized below.

At approximately 11:45 p.m. on January 15, 2012, Officer Diaz and Officer Emilio received a radio transmission for a domestic dispute involving a firearm (not specifically a BB gun) at § 87(2)(b) in Brooklyn. The transmission noted that a male was firing multiple shots within the premises. Officer Diaz did not recall if he received a description of the male.

Within two minutes, Officer Diaz and Officer Emilio arrived at § 87(2)(b) together. Other officers arrived simultaneously, but Officer Diaz did not recall who these officers were or their positions relative to the premises.

Officer Diaz walked to and knocked on the front door of the house. He did not recall if Officer Emilio or any of the other officers were with him. § 87(2)(b) opened the door and Officer Diaz asked him if everything was all right inside. § 87(2)(b) immediately became combative, stating, "This is fucking private property." § 87(2)(b) then attempted to punch Officer Diaz.

In reaction, Officer Diaz moved out of the way and grabbed § 87(2)(b) arm. Officer Diaz told § 87(2)(b) that he was under arrest and instructed him to place his hands behind his back. Officer Diaz held onto § 87(2)(b) arm and tried to pull him out of the house. § 87(2)(b) physically resisted Officer Diaz, twisting his body away from Officer Diaz while screaming expletives.

Finally, Officer Diaz pulled § 87(2)(b) out of the house. One or more officers, whose identities Officer Diaz did not recall, assisted Officer Diaz. Together, they took § 87(2)(b) to the ground. Officer Diaz did not recall how the officers took § 87(2)(b) to the ground, except to say that they grabbed him by his arms and wrists. Officer Diaz did not recall when § 87(2)(b) was handcuffed.

While on the ground, § 87(2)(b) continued to physically resist the officers. He repeatedly moved his body around, refusing to submit himself to police custody. Officer Diaz did not recall if the officers used any force against § 87(2)(b) while he was on the ground. Officer Diaz, however, did not punch § 87(2)(b) at any point during the encounter.

Witness Officer: OFFICER KATHERINE EMILIO

- *Officer Emilio is a § 87(2)(b)-year-old white female. She is 5'6" tall and 130 pounds. Officer Emilio has blonde hair and blue eyes.*
- *On January 15, 2012, Officer Emilio, of Patrol Borough Brooklyn North, worked the same tour and assignment as Officer Diaz.*

Memo Book Entries

Officer Emilio's memo book entries were consistent with those of Officer Diaz [enclosed 13A-13D].

CCRB Statement

Officer Emilio was interviewed at the CCRB on May 18, 2012 [enclosed 14A-14B]. § 87(2)(g)

Officer Emilio corroborated her and Officer Diaz's response to the radio transmission, their approach of the front door to § 87(2)(b) house, § 87(2)(b) reaction to the officers, and the way in which he was removed from the premises and taken to the ground.

As soon as § 87(2)(b) made it to the ground, § 87(2)(b) ran outside. Officer Emilio approached her to prevent her from interfering with the arrest. Officer Emilio, therefore, did not see § 87(2)(b) while he was on the ground.

At no point did Officer Emilio see Officer Diaz punch § 87(2)(b)

Additional Officers Interviewed

Officer David Chang, Officer Mark Ozechowski, Officer Nickalai Pillai, Officer Jason Acevedo, and Officer Nicholas Accetta, all of Patrol Borough Brooklyn North, were assigned to the 75th Precinct's Impact Response Team at the time of the incident. They were interviewed at the CCRB, respectively, on May 2, 2012, May 17, 2012, May 25, 2012, and June 1, 2012 (both Officer Acevedo and Officer Accetta) [enclosed 16A-16C, 18A-18B, 20A-20B, 22A-22C, 24A-24B] .

In their memo books [enclosed 15A-15C, 17A-17B], Officer Chang and Officer Ozechowski noted their response to § 87(2)(b) due to the presence of a firearm. They further noted that § 87(2)(b) was arrested by Officer Diaz. Officer Pillai's memo book entries [enclosed 19A-19D] and Officer Acevedo's memo book entries [enclosed 21A-21E] were consistent with those of Officer Diaz.

§ 87(2)(b), § 87(2)(g)

However, none of these officers saw Officer Diaz punch § 87(2)(b). In addition, none of these officers were able to recall when § 87(2)(b) was handcuffed, how he was taken to the ground, or what happened to him once he was on the ground.

Officer Ozechowski stated that he arrived once § 87(2)(b) had already been removed from the location. Officer Ozechowski claimed that, when he arrived, § 87(2)(b) was on the ground with one of his hands handcuffed. He was flailing his free arm, screaming, and rolling around. Two to three unidentified officers had surrounded § 87(2)(b). Officer Ozechowski did not recall how they physically apprehended him or if they used force.

Officer Accetta denied being present for the incident. He stated that he was in the 75th Precinct stationhouse processing an arrest at the time, which his memo book [enclosed 23A-23D] confirms.

Medical Records

Ambulance Call Report

Emergency Medical Services (EMS) treated § 87(2)(b) inside of the 75th Precinct stationhouse at 1:03 a.m. on January 16, 2012 [enclosed 25A-25B]. EMS noted that § 87(2)(b) resisted officers during his arrest, which resulted in the pain that he described.

Medical Records

§ 87(2)(b) arrived at § 87(2)(b) at § 87(2)(b) [enclosed 26A-26B1]. During a physical examination, medical personnel noted mild tenderness to § 87(2)(b) lower right ribs. § 87(2)(b) diagnosed with a contusion to his ribs and a contusion to his face. He was prescribed 400 milligrams of Motrin per day and discharged at § 87(2)(b).

NYPD Documents

SPRINT Report Number § 87(2)(b)

At 11:42 p.m. on January 15, 2012, a female caller [identified via investigation as § 87(2)(b)] called 911 and reported that her son [identified via investigation as § 87(2)(b)] was shooting a BB gun inside of her home at § 87(2)(b) in Brooklyn. § 87(2)(b) called 911 again at 11:45 p.m. and stated that her son was still shooting his BB gun. § 87(2)(b) and § 87(2)(b) were arguing during this telephone call. No injuries were reported.

By 11:45 p.m., multiple units from the 75th Precinct's Impact Response Team had arrived at the location. § 87(2)(b) was placed under arrest at 12:05 a.m. on January 16, 2012 [enclosed 27A-27C].

75th Precinct Command Log

According to the 75th Precinct Command Log [enclosed 28A-28K], § 87(2)(b) arrived at the 75th Precinct stationhouse at 12:10 a.m. on January 16, 2012. His physical and mental condition was recorded as "apparently normal." Force was not listed as having been used.

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- As of July 5, 2012, roughly three months following the expiration of the 90-day filing deadline, neither [§ 87(2)(b)] nor [§ 87(2)(b)] had filed a Notice of Claim with the City of New York with regard to the incident [enclosed 23A-23B].

Civilians Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians CCRB Histories

- This is the first CCRB complaint filed by [§ 87(2)(b)] and the first CCRB complaint in which [§ 87(2)(b)] was involved [enclosed 2A-2B].

Subject Officer CCRB History

- Officer John Diaz had been a member of the service for two years and there are no substantiated CCRB allegations against him [enclosed 1].

Conclusion

Identification of Subject Officers

Officer Diaz acknowledged his initial interaction with [§ 87(2)(b)] and acknowledged removing him from the house. [§ 87(2)(g)]

Allegation Not Pleaded

[§ 87(2)(b), § 87(2)(g)]

Investigative Findings and Recommendations

Allegation A—Force: Officer John Diaz used physical force against § 87(2)(b):

§ 87(2)(b) alleged that, when he opened the front door, he calmly invited Officer Diaz and Officer Emilio inside. He testified that, in reaction, Officer Diaz, who did not say anything to him, immediately punched him underneath one of his two eyes.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g) Officer Diaz stated that when § 87(2)(b) opened the door, he immediately became belligerent, screaming at him and attempting to punch him. Officer Diaz testified that he grabbed § 87(2)(b) by the arm and pulled him out of the house. Officer Diaz denied having punched § 87(2)(b)

Officer Emilio, Officer Chang, Officer Pillai, and Officer Acevedo corroborated Officer Diaz's account of the way in which § 87(2)(b) was removed from the house. They did not see Officer Diaz punch him.

§ 87(2)(b), § 87(2)(g)

Allegation B—Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after Officer Diaz punched him, multiple officers entered the location and dragged him outside. He testified that once outside, the officers repeatedly "hit" him on different parts of his body. He could not describe the way in which the officers struck him in more detail. However, § 87(2)(b) stated that he did not physically resist the officers in any capacity.

§ 87(2)(g) § 87(2)(b) testified that after § 87(2)(b) fell onto the stairwell in reaction to the punch, he struggled with Officer Diaz, screaming, kicking, and "moving around" as Officer Diaz attempted to remove him from the location.

§ 87(2)(b) did not see what happened outside.

Officer Diaz and Officer Ozechowski, the only two officers who could recall § 87(2)(b)'s actions while outside on the ground, testified that he persistently resisted the officers, flailing his body and refusing to submit himself to police custody.

§ 87(2)(b), § 87(2)(g)

According to § 87(2)(b) medical records, he suffered contusions, or bruising, to his ribs and face. § 87(2)(b) arrest photograph reveals only slight bruising to his left eye. No other visible injuries to his face are evident.

§ 87(2)(b), § 87(2)(g)

According to NYPD Patrol Guide Procedure 203-11 [enclosed AA-AB], officers are required to use minimum force necessary to execute an arrest.

§ 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date